

§ 350.8

branch, the bank shall at all times display a notice that the annual disclosure statement may be obtained from the bank. The notice shall include at a minimum an address and telephone number of which requests should be directed. The first copy of the annual disclosure statement shall be provided to a requester free of charge.

§ 350.8 Delivery.

Each bank shall, after receiving a request for an annual disclosure statement, promptly mail or otherwise furnish a statement to the requester.

§ 350.9 Disclosure of examination reports.

Except as permitted under specific provisions of the FDIC's regulations (12 CFR part 309), a bank may not disclose any report of examination or report of supervisory activity or any portion thereof prepared by the FDIC. The bank also shall not make any representation concerning such report or the findings therein.

§ 350.10 Prohibited conduct and penalties.

(a) *Misrepresentations.* No officer, director, employee, agent, or other person participating in the affairs of a bank, shall, directly or indirectly:

(1) Disclose or cause to be disclosed false or misleading information in the annual disclosure statement, or omit or cause the omission of pertinent or required information in the annual disclosure statement; or

(2) Represent that the FDIC, or any employee thereof, has reviewed, or confirmed the accuracy or relevance of the disclosure statement.

(b) *Participating persons.* For purposes of this part, a person *participating in the affairs of a bank* shall include (but not be limited to) any person who provides information contained in, or directly or indirectly assists in the preparation of, the annual disclosure statement.

(c) *Enforcement actions.* Conduct that violates paragraph (a) of this section may constitute an unsafe or unsound banking practice or otherwise serve as a basis for an enforcement action by the FDIC.

12 CFR Ch. III (1–1–98 Edition)

§ 350.11 Safe harbor provision.

The provisions of § 350.10 shall not apply unless it is shown that the information disclosed was included without a reasonable basis or other than in good faith.

§ 350.12 Disclosure required by applicable banking or securities law or regulations.

The requirements of this part are not intended to replace or waive any disclosure required to be made under applicable banking or securities law or regulations.

[62 FR 10201, Mar. 6, 1997]

PART 351—INTERNATIONAL OPERATIONS

Sec.

351.1 Allocated transfer risk reserve.

351.2 Accounting for fees on international loans.

351.3 Reporting and disclosure of international assets.

AUTHORITY: Title IX, Pub. L. 98–181, 97 Stat. 1153.

§ 351.1 Allocated transfer risk reserve.

(a) *Definitions.* For the purposes of this subpart:

(1) *Banking institution* means an insured state nonmember bank.

(2) *Federal banking agencies* means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(3) *International assets* means those assets required to be included in banking institutions' "Country Exposure Report" forms (FFIEC No. 009).

(4) *Transfer risk* means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

(b) *Allocated Transfer Risk Reserve*—(1) *Establishment of Allocated Transfer Risk Reserve.* A banking institution shall establish an allocated transfer risk reserve (ATRR) for specified international assets when required by the FDIC in accordance with this section.

(2) *Procedures and Standards*—(i) *Joint agency determination.* At least annually,

the Federal banking agencies shall determine jointly, based on the standards set forth in paragraph (b)(2)(ii) of this section, the following:

(A) Which international assets subject to transfer risk warrant establishment of an ATRR;

(B) The amount of the ATRR for the specified assets; and

(C) Whether an ATRR established for specified assets may be reduced.

(ii) *Standards for requiring ATRR—(A) Evaluation of assets.* The Federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(I) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether:

(i) Such obligors have failed to make full interest payments on external indebtedness;

(ii) Such obligors have failed to comply with the terms of any restructured indebtedness; or

(iii) A foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(2) Whether no definite prospects exist for the orderly restoration of debt service.

(B) *Determination of amount of ATRR.* (I) In determining the amount of the ATRR, the Federal banking agencies shall consider:

(i) The length of time the quality of the asset has been impaired;

(ii) Recent actions taken to restore debt service capability;

(iii) Prospects for restored asset quality; and

(iv) Such other factors as the Federal banking agencies may consider relevant to the quality of the asset.

(2) The initial year's provision for the ATRR shall be ten percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be fifteen percent of the principal amount of each specified

international asset, or such greater or lesser percentage determined by the Federal banking agencies.

(iii) *FDIC notification.* Based on the joint agency determinations under paragraph (b)(2)(i) of this section, the FDIC shall notify each banking institution holding assets subject to an ATRR:

(A) Of the amount of the ATRR to be established by the institution for specified international assets; and

(B) That an ATRR established for specified assets may be reduced.

(3) *Accounting treatment of ATRR—(i) Charge to current income.* A banking institution shall establish an ATRR by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(ii) *Separate accounting.* A banking institution shall account for an ATRR separately from the Allowance for Possible Loan Losses, and shall deduct the ATRR from *gross loans and leases* to arrive at *net loans and leases*. The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(iii) *Consolidation.* A banking institution shall establish an ATRR, as required, on a consolidated basis. For banks, consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of *Consolidated Reports of Condition and Income* (FFIEC Nos. 031, 032, 033 and 034).

(iv) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the allowance for Possible Loan Losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset. However, the Allowance for Possible Loan Losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan portfolio.

(v) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the FDIC or, at any time, by writing down such amount of the international asset for which the ATRR was established.

[49 FR 5593, Feb. 13, 1984]

§ 351.2 Accounting for fees on international loans.

(a) *Definitions.* For the purpose of this subpart:

(1) *International loan* means a loan as defined in the instructions to the "Report of Condition and Income" for the respective banking institution (FFIEC Nos. 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(2) *International syndicated loan* means a loan characterized by the formation of a group of *managing* banking institutions and, in the usual case, assumption by them of underwriting commitments and participation in the loan by other banking institutions.

(3) *Loan agreement* means the documents signed by all of the parties to a loan, containing the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower.

(4) *Restructured international loan* means a loan that meets the following criteria: (i) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and either (ii) the terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or (iii) a new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

(b) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured loan unless all fees exceeding the banking institution's administrative costs, as described in

paragraph (d)(2) of this section, are deferred and recognized over the term of the loan as an interest yield adjustment.

(c) *Amortizing fees.* Except as otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method during the loan period, the straight-line method shall be used.

(d) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.* (1) Administrative costs of originating, restructuring, or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function and, where applicable, the syndication function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(e) *Fees received by managing banking institutions.* Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on

a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentations shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(f) *Loan commitment fees.* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(g) *Agency fees.* Fees paid to an agent banking institution for administrative services in an international syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

[49 FR 12198, Mar. 29, 1984]

§351.3 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98-181, 97 Stat. 1153) (ILSA), a bank-

ing institution shall submit to the FDIC, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA, a banking institution shall submit to the FDIC information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution, such information to be made publicly available by the FDIC on request.

(b) *Procedures.* The format, content and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the Federal banking agencies. The requirements to be prescribed by the Federal banking agencies may include changes to existing forms (such as revisions to the Country Exposure Report, Form FFIEC No. 009) or such other requirements as the Federal banking agencies deem appropriate. The Federal banking agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the Federal banking agencies' judgment, have *de minimis* holdings of international assets.

(c) *Reservation of authority.* Nothing contained in this rule shall preclude the FDIC from requiring from a banking institution such additional or more frequent information on the institution's holdings of international assets as the agency may consider necessary.

[49 FR 5587, Feb. 13, 1984]

PART 352—NONDISCRIMINATION ON THE BASIS OF HANDICAP

Sec.

- 352.1 Purpose.
- 352.2 Application.
- 352.3 Definitions.
- 352.4 Self-evaluation.
- 352.5 General requirements.
- 352.6 Employment.
- 352.7 Program accessibility: Existing facilities.
- 352.8 Program accessibility: New construction and alterations.
- 352.9 Communications.
- 352.10 Compliance procedures.
- 352.11 Notice.

AUTHORITY: 12 U.S.C. 1819.